

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

**SQUARE, INC. and JAMES
MCKELVEY, JR.**

Plaintiffs,

vs.

REM HOLDINGS 3, LLC

Defendant.

§
§
§
§
§
§
§
§
§
§

Civil Action No. 4:10-cv-2243-SNLJ

JURY TRIAL DEMANDED

**ROBERT E. MORLEY, JR. and
REM HOLDINGS 3, LLC**

Plaintiffs,

vs.

**SQUARE, INC., JACK DORSEY, and
JAMES MCKELVEY, JR.**

Defendants.

§
§
§
§
§
§
§
§
§
§
§

Civil Action No. 14-cv-00172-SNLJ

**JURY TRIAL DEMANDED
(CONSOLIDATED)**

**DEFENDANTS' MOTION TO EXCLUDE IN PART
THE EXPERT TESTIMONY OF JAMES E. MALACKOWSKI**

For the reasons stated in the accompanying memorandum of law, Defendants Square, Inc., Jack Dorsey, and James McKelvey, Jr. (collectively "Defendants") respectfully request an order excluding James E. Malackowski's improper legal opinion that Plaintiff Robert Morley was in a joint venture with Mr. Dorsey and Mr. McKelvey in 2009, along with Mr. Malackowski's impermissible marshaling of facts on the issue. Defendants also respectfully request such other and further relief as is just and proper.

Dated: February 12, 2016

By: /s/ Orin Snyder

Josh A. Krevitt (*pro hac vice*)
Orin Snyder (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, New York 10166-0193
Telephone: (212) 351-4000
Facsimile: (212) 351-4035

Edward L. Dowd, Jr., #28785
Jennifer Kingston, #93569
DOWD BENNETT LLP
7733 Forsyth Blvd., Suite 1900
St. Louis, Missouri 63105
Telephone: (314) 889-7300
Facsimile: (314) 863-2111

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2016, the foregoing was served via the electronic filing system of the U.S. District Court for the Eastern District of Missouri on all counsel of record.

/s/ Angel Arias